

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

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FILED
ASHEVILLE, N.C.
JUN 10 2016
U.S. DISTRICT COURT
W. DIST. OF N.C.

United States District Court		District Western District Of N.C
Name (under which you were convicted): Kenneth Randolph Patterson		Docket or Case No.: 1:16-cr-162/2:91-cr-81
Place of Confinement: Edgefield, South Carolina Federal Inst.		Prisoner No.: 08997-058
UNITED STATES OF AMERICA		Movant (the name under which you were convicted) Kenneth Randolph Patterson

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

U.S. District Court
Western District Of North Carolina
Asheville Division

(b) Criminal docket or case number (if you know): B-CR-91-81

2. (a) Date of the judgment of conviction (if you know): September 8, 1992

(b) Date of sentencing: September 8, 1992

3. Length of sentence: 387 months

4. Nature of crime (all counts):
By force take from others money in care of
bank 18:2113(A) 924 (C)(1) Count 1
Take money from bank insured by FDIC 18:2113 (b) Count 2
by force take from others money in bank and put in jeopardy
the lives of others. Count 3 18:2113 (d)

5. (a) What was your plea? (Check one)

(1) Not guilty ☒ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? NA

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☐ No ☒
9. If you did appeal, answer the following:
- (a) Name of court: N/A
- (b) Docket or case number (if you know): N/A
- (c) Result: N/A
- (d) Date of result (if you know): N/A
- (e) Citation to the case (if you know): N/A
- (f) Grounds raised: N/A

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know): N/A
- (2) Result: N/A
- (3) Date of result (if you know): N/A
- (4) Citation to the case (if you know): N/A
- (5) Grounds raised: N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: N/A
- (2) Docket or case number (if you know): N/A
- (3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application? N/A

(1) First petition: Yes ☐ No ☐ N/A

(2) Second petition: Yes ☐ No ☐ N/A

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: I relied on my attorney to properly advise me on legal issues and was advised and lead to believe I had no grounds for an appeal.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have ~~more~~ than four grounds. State the facts supporting each ground.

GROUND ONE:

I'm serving an unlawful sentence in excess of statutory maximum for 18:2113(A) 924(C) 18:2113(B) 18:2113 (d)
 (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
 The maximum term of imprisonment for a violation of 18 U.S.C Section 2113(d) which is the most serious of all charges carried a max of 25 years. The Judgment and Commitment shows the court sentenced me to a term of 327 months on each count 1,2,3 then they sentenced me to a consecutive 60 months assuming the 60 months is for the 924(C)(1) conviction for use of a weapon during the commission of a violent crime. The sentences are illegal in many aspects: (1) 2113(B) carries a max of 10 years and 2113(A) carries a max of 20 years. A sentence of 327 months on each count exceeds the statutory maximum. The statutes (2113)(A)(B)(D) are not categorically crimes of violence, and after the Supreme Court: June 26th, 2015 decision in Johnson Vs. United States, "the residual clause" in 924(C)(3)(B) is equally UnConstitutionally vague. (See Judgment And Commitment)
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(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

I did not Appeal because my attorney said there was not any issue to Appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state: N/A

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Because I relied upon my attorneys experience with law to know what he was talking about when he told me I did not have any issue to Appeal. I trusted his judgment and legal training. If I didn't have an issue to Appeal I didn't think I had an issue to file anything until I learned about the U.S Supreme Court decision in June 2015 about the Residual Clause being Unconstitutional.

GROUND TWO: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐ N/A

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

N/A

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND THREE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐ N/A

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐ N/A

(2) If your answer to Question (c)(1) is "Yes," state: N/A

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise ~~this issue in the appeal?~~

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND FOUR:

N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐ N/A

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐ N/A

(2) If your answer to Question (c)(1) is "Yes," state: N/A

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

N/A
Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

N/A
Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not

presenting them: I was unaware until the U.S. Supreme Court decision in the June 26th, 2015 case of Johnson VS. United States

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.
N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

(b) At arraignment and plea:

William T. Biqqers

(c) At trial:

William T. Biqqers

(d) At sentencing:

William T. Biqqers

(e) On appeal:

(f) In any post-conviction proceeding:

N/A

(g) On appeal from any ruling against you in a post-conviction proceeding:

N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☐

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.* The limitation period began on June 26th, 2015 when the United States Supreme Court decided on Johnson Vs. United States, 135 s.ct.2551, 192 L.Ed 2d 569 (2015) which declared the Residual Clause Unconstitutionally vague for not giving fair notice in violation of the due process clause in the fifth Amendment to the United States Constitution.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, ~~movant~~ asks that the Court grant the following relief:

Immediate Release from my present confinement location
Federal Correctional Institution, Edgefield, South Carolina

or any other ~~relief~~ to which ~~movant~~ may be entitled.

Signature of Attorney (if any)

I declare (or ~~certify~~, verify, or state) under penalty of perjury that the foregoing is true and ~~correct~~
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on
(month, date, year).

Executed (signed) on JUNE 6, 2016 (date).

Kenneth Randolph Patterson
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

United States District Court

WESTERN

District of NORTH CAROLINA

UNITED STATES OF AMERICA

V.

KENNETH RANDOLPH PATTERSON

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1990)

Case Number: B-CR-91-81

(Name of Defendant)

William T. Biggers

Defendant's Attorney

THE DEFENDANT:

- ☐ pleaded guilty to count(s) _____
- ☒ was found guilty on count(s) 1, 2 & 3
- plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense:

Title & Section	Nature of Offense	Date Offense Concluded	Number
18:2113(a) 924(c) (1)	By force take from others money in care of bank.	5-18-90	
18:2113(b)	Take money from bank insured by FDIC.	5-18-90	
18:2113(d)	By force take from others money in bank and put in jeopardy the lives of others.	5-18-90	

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____ and is discharged as to such count(s).

☒ Count(s) 4 (is/are) dismissed on the motion of the United States Attorney.

☒ It is ordered that the defendant shall pay a special assessment of \$150.00, without interest for 1, 2 & 3, which shall be due ☒ immediately ☒ as follows: Due during incarceration with any balance to be paid during supervised release, on approved by the Probation office.

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 250-82-6605Defendant's Date of Birth: 1-14-55

Defendant's Mailing Address:

Buncombe County Jail

Asheville, N. C. 28801

Certified to be a true and correct copy of the original.

U.S. District Court

Frank G. Johns, Clerk

Western District of N.C.

Defendant's Residence Address:

By: [Signature]

Deputy Clerk

Date: 7/9/2014

September 8, 1992

Date of Imposition of Sentence

[Signature]

Signature of Judicial Officer

RICHARD L. VOORHEES, Chief Judge, U.S.

Name & Title of Judicial Officer

September 8, 1992

Date

Defendant: Kenneth Randolph Patterson
 Case Number: B-CR-91-81

Judgment—Page 2**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned a term of Three Hundred Eighty-Seven (387) Months. This term consists of 327 Months count to run concurrently as among Counts 1,2,3, and consecutively in reference to Florida sentence of 10 years imposed on or about April 15, 1987, as specified in Presentence Investigation. That sentence in reference to Counts 1,2,3 of 327 Months run concurrently as to any other sentences which are pre-existing. In addition, imposes the final 60 Months of the total 387 month sentence to run consecutively pre-existing sentence.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States marshal.

☐ The defendant shall surrender to the United States marshal for this district,

☐ at _____ a.m.

☐ at _____ p.m. on _____

☐ as notified by the United States marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons,

☐ before 2 p.m. on _____

☐ as notified by the United States marshal.

☐ as notified by the probation office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

_____, with a certified copy of this judgment

 United States Marshal

By _____

Defendant: Kenneth Randolph Patterson
 Case Number: B-CR-91-81

Judgment—Page 3

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 1 Years

While on supervised release, the defendant shall not commit another federal, state, or local crime and illegally possess a controlled substance. The defendant shall comply with the standard conditions that adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of supervised release. The defendant shall comply with the following additional conditions:

☒ The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

☐ The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.

☒ The defendant shall not possess a firearm or destructive device.

Obey standard conditions of supervised release.

Not commit any crimes, local, state or federal.

Pay the cost of court-appointed counsel, without interest, on a schedule approved by the Probation Office.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime.

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a crime within ten years of the date of release without the permission of the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband found in plain view by the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such requirements.

Kenneth Randolph Patterson
 -CR-91-81

Judgment—Page 4 of 5

RESTITUTION AND FORFEITURE

RESTITUTION

shall make restitution to the following persons in the following amounts:

<u>Payee</u>	<u>Amount of Restitution</u>
Citizens Bank & Trust Co. Gate Rd. , N. C.	\$1,000.00, without interest

ation are to be made to:

ates Attorney for transfer to the payee(s).

paid:

ia /.

er than _____

thly installments over a period of _____ months. The first payment is due on the date of
 t. Subsequent payments are due monthly thereafter.

s according to the ~~following~~ schedule of payments: Due and payable during
 on with any balance to be paid during supervised release, on a schedule
 the Probation office.

be divided proportionately among the payees named unless otherwise specified here.

FORFEITURE

is ordered to forfeit the following property to the United States:

Defendant: Kenneth Randolph Patterson
Case Number: B-CR-91-81

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STATEMENT OF REASONS

☒ The court adopts the factual findings and guideline application in the presentence report.

OR

☐ The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court:

Total Offense Level: 34

Criminal History Category: VI

Imprisonment Range: 262 to 327 months (plus 5 yrs. consecutive for 18:924 (

Supervised Release Range: 3 to 5 years

Fine Range: \$ 17,500. to \$ 175,000.

☒ Fine is waived or is below the guideline range, because of the defendant's inability to
Restitution: \$ 1,000.00 First Citizens Bank & Trust Co.
530 Westgate Rd., Franklin, N. C.

☒ Full restitution is not ordered for the following reason(s):

Defendant's inability to pay.

☐ The sentence is within the guideline range, that range does not exceed 24 months, and the court has no reason to depart from the sentence called for by application of the guidelines.

OR

☒ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is within the guideline range for the following reason(s):

The Government and the Defendant stipulated to a sentence of 387 months. The Government agrees not to take certain actions pursuant to this stipulation, and the Defendant feels that this is in his best interest.

OR

The sentence departs from the guideline range

☐ upon motion of the government, as a result of defendant's substantial assistance.

☐ for the following reason(s):